IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 471 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANIBEN TASUKHBHAI

Versus

PATEL RANCHHODBHAI VALJIBHAI

Appearance:

1. First Appeal No. 471 of 1984
MR JR NANAVATI for appellants
MR KG SHETH for Respondent No. 1
MR RC JANI for Respondent No. 2

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE H.K.RATHOD

Date of decision: 18/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE H.K.RATHOD)

Heard learned Advocates Mr.J.R.Nanavati on behalf of the appellants-claimants, Mr.K.G.Sheth on behalf of respondent No.1 and Mr.R.C.Jani appearing on behalf of respondent No.2.

2. In the present appeal, the claimants have challenged the award passed by the Motor Accident Claims Tribunal, Amreli in M.A.C.P.No. 11 of 1983, dated 2nd December 1983. The Tribunal has directed the respondents to pay the amount of compensation of Rs.50,750/- with interest at the rate of 6% from the date of the petition till realisation of the amount and proportionate costs. The Tribunal has also apportioned the above amount as under:

Rs.15,125/- to Claimant No. 1 and
Rs.11,875/- each to Claimant Nos.2 to 4.

The amount awarded to Claimant Nos.2 to 4, they being minor children, has been ordered to be invested in Scheduled Bank in long term deposit and the amount of interest and costs has been ordered to be paid to Claimant No.1.

3. Learned Advocate Mr.J.R.Nanavati, appearing on behalf of the appellants-claimants has not challenged the Issue with respect to the negligence of the deceased. He has raised only one contention that, the compensation which has been awarded by the Tribunal is on a lower side and the appellants-claimants are entitled to compensation on a higher side. He submitted that the Tribunal has committed an error in applying the multiplier of 15 and the future prospects of income has not been taken into account while awarding the compensation and, therefore, the appellants are entitled to enhancement in the amount of compensation. He also submitted that the global amount as a whole which has been granted by the Tribunal i.e. Rs.5,000/- is also on a lower side which includes the loss of expectation of life and consortium and therefore, the appellants are entitled to some more amount under this head. Except that, learned Advocate Mr.Nanavati has not raised any other contention.

4. Learned Advocate Mr.R.C.Jani appearing on behalf of the respondent Insurance Company has submitted that the Tribunal has rightly appreciated the evidence on record in respect to the income part of the deceased and

looking to the age of the deceased, i.e. 26 years, the Tribunal has rightly applied the multiplier of 15 and the Tribunal has rightly deducted Rs.150/- towards the personal expenses of the deceased's monthly income of Rs.666/-. He relied upon a decision of the Apex Court in the case of National Insurance Co.Ltd. v. M/s. Swaranlata Das, reported in AIR 1993 SC 1259 wherein, according to him, the deceased was aged about 26 years and the Apex Court has considered multiplier of 15 and therefore, in the facts of the present case also, the Tribunal has rightly applied multiplier of 15 and no change is necessary. Except this, learned Advocate Mr.Jani has not made any other submission.

5. In view of the submissions made by both the learned Advocates, the brief facts of the present appeal are as under:

On 30th November 1982, deceased Tansukhbhai Siddibhai, whose heirs are the claimants in Claim Case No. 11 of 1983, was riding the motor cycle of his ownership bearing Regn.No.GJP 2999 and was proceeding on Amreli-Dhari Road with Virendra Jayantilal Mehta, claimant in Claim Case No.12 of 1983, as pillion rider at about 9.30 a.m. and at that time, Patel Ranchhodbhai Valjibhai, opponent No.1, owner of Motor Cycle bearing Regn.No.GAB 3019 was riding his motor cycle from Dhari-Amreli and both the vehicles were proceeding in opposite direction between villages Gavadka and Vankiya. There was a collision between the two vehicles. The vehicle of opponent No.1 was insured with New India Assurance Company, opponent No.2 in the claim petition. As a result of collision, which, according to the claimants was, on account of rash and negligent driving of the motor cycle by opponent No.1. Tansukhbhai Siddibhai and Virendra Jayantilal fell down along with their motor cycles and both of them sustained serious injuries and Tansukhbhai was shifted for treatment at Civil Hospital, at Amreli and thereafter shifted to the Hospital at Ahmedabad where he succumbed to the injuries. The deceased was aged about 26 years at the time of his death.

6. Before the Tribunal, the claimants have filed the claim petition under Section 110-A of the Motor Vehicles Act and the Insurance Company has filed its written statement. Thereafter the Tribunal has framed the Issues as mentioned in paragraph 5 of the judgment and has examined the question of negligence and ultimately held that there was equal degree of negligence in driving the vehicle on the part of the deceased as well as opponent

No.1. The Tribunal, therefore, fixed the degree of contributory negligence at 50% each on the deceased as well as opponent No.1. Learned Advocate Mr.J.R.Nanavati has not challenged this finding which has been given by the Tribunal in respect to Issue Nos.1 and 2. According to the Tribunal, looking to the date of accident, the Insurance policy has covered the risk. Thereafter the Tribunal examined the question of compensation as claimed by the claimants, i.e. Rs.1,38,250/- on the basis of the income of the deceased.

Before the Tribunal, on behalf of the claimants, Maniben, widow of the deceased, was examined and according to her deposition, at the time of accident, the deceased was aged about 26 years and was having a business of Timber along with his father and three other partners. The partnership deed is produced at Exh.55. This business was there since 24th November 1980. According to the partnership deed, it appears that deceased Tansukhbhai Siddibhai had 15 paise share in one rupee in this business. On behalf of the claimants, a copy of capital account has been produced at Exh.56 which shows that an amount of Rs.7,244.19 ps. as a net profit share of Tansukhbhai Siddibhai on the basis of 15%. Except that, no other documentary evidence of the business was produced before the Tribunal. Therefore, the Tribunal has considered Rs.7,244.19 ps. as the annual net income of the deceased. Though Maniben, widow of the deceased, has also deposed that her husband was also doing electric motor repairing work and was having income from it, in her cross examination, she has admitted that deceased did not possess any licence for electric motor repairs and was not a licensed Wireman. In light of this evidence, the Tribunal fixed the annual income of Rs.8,000/- of the deceased, which would come to Rs.666/- per month. Thereafter the Tribunal has considered the evidence of Maniben, widow of the deceased that the deceased was having personal expenses about Rs.150/- per month, which has been deducted from the monthly income of Rs.666/- which comes to Rs.500/- per month approximately and the same is considered as dependency benefit. This would come to Rs.6,000/- per year being family dependency. Thereafter the Tribunal has considered, looking to the age of the deceased as 26 years at the time of the accident, a multiplier of 15 the total of which comes to Rs.90,000/- and after adding the global amount of Rs.5,000/-, the Tribunal has come to the conclusion that the claimants are entitled to Rs.95,000/as compensation. From the said amount, considering contributory negligence, 50% has been deducted which comes to Rs.47,500/-. The Tribunal has

also awarded Rs.2,000/- by way of miscellaneous expenses for taking the deceased for treatment at Ahmedabad and bringing his body to Visavadar and an amount of Rs.1,250/- has been awarded as damage to the motor cycle. In all, the total amount comes to Rs.50,750/- with interest at the rate of 6% and proportionate costs has also been awarded by the Tribunal.

7. We have perused the award passed by the Tribunal in respect to M.A.C.P. No.11 of 1983. The Tribunal has considered the existing monthly income of the deceased which was received by him at the time of death, but the Tribunal has not considered the future prospects of income of the deceased as the deceased was aged about 26 years at the time of accident. This fact is very clear from the award itself because, the Tribunal has taken into account a monthly income of Rs.666/- and out of that, an amount of Rs.150/- has been deducted by way of personal expenses and the net family dependency comes to Rs.500/- per month and it would come to Rs.6,000/- per year. Therefore, the Tribunal has ignored the future prospects of income of the deceased. This fact is not disputed by learned Advocate Mr.R.C.Jani which has been even found from the award itself. While awarding compensation, it is necessary for the Tribunal to consider the future prospects of income of the deceased and as per the view taken by the Apex Court in the case of Donalt Louis Machado v. L.Ravindra, reported in 1999 ACJ 1400, wherein the Apex Court followed the theory while calculating the future prospects of income. According to the theory which has been followed by the Apex Court, the existing income per year has been taken into account which has been added by double the figure of monthly income and thereafter the existing monthly income has been again added and whatever total comes is divided by 50% which ultimately comes to the annual income of the deceased. From the said total annual income of the deceased, 1/3rd has been deducted and whatever the figure would come, it will have to be applied by the multiplier according to the age of the deceased and that would be the total amount of compensation which includes the future prospects of income. According to the Apex Court, this theory will give an appropriate compensation payable to the claimants on account of economical loss suffered by them as a result of the unfortunate accident to the breadwinner. The relevant paragraph, i.e. paragraph 3 from the above decision is quoted as under:

> "3. We have heard learned counsel for the appellants-claimants as well as learned counsel for the insurance company, who is the real

> contesting party at this stage and who has to bear the burden of the total amount of compensation made payable to the claimants. We may note certain salient features of the case which are not in dispute. The deceased was earning Rs.2,500 per month in his vocation as a Journalist at the relevant time. He was aged 31 years when his life was cut short because of the unfortunate accident. Learned counsel for the claimants contended that he was also earning extra income, but as there is no clear evidence, we will proceed on the basis that he was earning Rs.2,500 per month at least. As he died at a comparatively younger age of 31 years, he had a very lucrative career before him for a number of years had he survived. Therefore, we can easily visualise that his total earnings would have gone up by at least Rs.5,000 per month by the time he would have rested on his oars and given up his work as a journalist after exhausting his full earning career. Consequently, the total amount would work out at Rs.7,500 per month during the whole span of future career and taking an average at 50 per cent, his future monthly income during the rest of the life could have worked out at Rs.3,750. On that basis, 12 months' earning would have been Rs.45,000 and adopting a multiplier of 15 looking to the young age of the deceased the total economical gain to his estate would work out at Rs.6,75,000 at least. But taking a conservative figure of Rs.6,00,000 it can easily be visualised that the claimants who are the parents and unmarried sister and who are dependent on him would have got at least 1/3rd amount as he would have spent the rest of 2/3rd amount of his earnings on his own family which he would have raised and on himself. This would come to a figure of Rs.2,00,000. This can easily be treated to be the appropriate compensation payable to the claimants on account of economical loss suffered by them as a result of the unfortunate accident to their breadwinner. The High Court has granted the compensation of Rs.1,27,000 so that the remaining amount which can be assessed as payable by the respondents would be Rs.73,000 more."

8. In light of the observations made by the Apex Court in above referred case and looking to the monthly income of the deceased as assessed by the Tribunal at Rs.666/- and after deducting 1/3rd towards expenses which

comes to Rs.500/- per month, the yearly income would work out to Rs.6,000/-. Therefore, considering the monthly income at Rs.666/- added by double of that, i.e. Rs.1,332/-, it comes to Rs.1,998/-. We can take the round figure at Rs.2,000/- per month which is divided by 50%, then it comes to Rs.1,000/-. From this amount, if 1/3rd amount is deducted towards personal expenses, then it would come to Rs.667/- being family dependency amount of the claimants. This amount of Rs.667/- is multiplied by 12, it comes to Rs.7,992/- and therefore, we can take Rs.8,000/- as round figure as yearly dependency benefit to the claimants. Now the question arises as to what multiplier has to be applied? Looking to the age of the deceased as 26 years and if we take the guidance from the Second Schedule which relates to Section 163-A of the M.V. Act, as per which if the age of the deceased is beyond 25 years and upto 30 years, a multiplier of 18 has been considered to be a proper multiplier. Learned Advocate Mr.Jani has raised an objection in applying the multiplier of 18 and he relied upon the decision of the Apex Court in the case reported in AIR 1993 SC 1259. According to him, in the facts of the case, the deceased was aged about 26 years and the Supreme Court has applied the multiplier of 15 and the same multiplier may be considered to be appropriate multiplier in the facts of the present case as well considering the age of the deceased. This aspect has also been considered by the Apex Court in the case of U.P. State Road Transport Corporation v. Trilok Chandra, reported in 1996 ACJ 831. In paragraph 18 of the said judgment, the Apex Court has observed that the calculation of compensation and the amount worked out in the Schedule suffer from several defects. Therefore, neither the Tribunals nor the courts can go by the ready reckoner. It can only be used as a guide. Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependents are his parents, age of the parents would also be relevant in the choice of multiplier. But these mistakes are limited to actual calculations only and not in respect of other items. Therefore, the Apex Court has observed and proposed to emphasise is that the multiplier cannot exceed 18 years' purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16.

9. In light of the above referred to decisions of the Apex Court and considering the facts of the present case that the deceased having three minor children and a widow and except them there is no other family member available, and looking to the age of the deceased as 26

years and taking the guidance from the Second Schedule which suggests multiplier of 18 in case of deceased beyond the age of 25 years and upto the age of 30 years, according to our opinion, multiplier of 18 would be a appropriate multiplier while awarding compensation to the claimants. Therefore, considering the yearly dependency benefit of the claimants as Rs.8,000/- multiplied by the multiplier of 18, the amount would come to Rs.1,44,000/-. Now, one more aspect is required to be taken into account in respect to the amount, i.e. Rs.5,000/- which has been awarded by the Tribunal under the head of global amount. Considering the fact that there are three minor children and a widow and the age of the deceased is 26 years and also taking into account the loss of expectation of life etc., according to our opinion, instead of Rs.5,000/which has been awarded by the Tribunal, it would meet the ends of justice, if an amount of Rs.15,000/- is awarded. Therefore, in all, the total amount would come to Rs.1,59,000/-. From the said amount of Rs.1,59,000/-, considering the negligence of 50% of the deceased, half of the amount is to be deducted and therefore, the amount would come to Rs.79,500/- and the claimants are entitled to get the said amount of compensation from the respondents. Adding the amount of Rs.2,000/- awarded by the Tribunal by way of Miscellaneous expenses for taking the deceased for treatment at Ahmedabad and bringing the dead body to Visavadar and the amount of Rs.1,250/- towards damage of the motor cycle to the above amount of Rs.79,500/-, the total amount comes to Rs.82,750/-. Out of this amount, the amount of Rs.50,750/- awarded by the Tribunal has to be deducted and therefore, the net amount now payable to the claimants would be Rs.32,000/- only.

10. In view of our above calculation, the amount of compensation now requires to be paid to the claimants is Rs.32,000/- with 6% interest and proportionate costs from the date of filing of the petition till realisation.

11. In the result, the present appeal is partly allowed. The award passed by the Motor Accident Claims Tribunal, Nadiad in M.A.C.P. No.11 of 1983 dated 2nd December 1983 is modified to the aforesaid extent. The Respondent Insurance Company is directed to pay the said amount of Rs.32,000/- with 6% interest from the date of filing of the petition before the Tribunal within a period of three months from the date of receipt of the certified copy of this judgment and order. There shall be no order as to costs.

(Kshitij R. Vyas, J.)

(H.K. Rathod, J.)

Sreeram.